

SPECIAL CIVIL APPLICATION No 738 of 1985

Hon'ble MR.JUSTICE S.D.PANDIT

JJJ

J

5. Whether it is to be circulated to the Civil Judge? No.

Versus

Appearance:

MR SN SHELAT for Petitioner
MR HK RATHOD for Respondent No. 1
MR MI HAVA for Respondent No. 2

Date of decision: 26/07/96

Gujarat State Road Transport Corporation
(hereinafter referred to as the Corporation) has
preferred this petition under article 227 of the
Constitution against the order passed by the Conciliation

Officer, Vadodara on 6.9.84.

2. Respondent no.1 Amirali Roshanali Saiyed was working as a conductor with the petitioner. He found to have committed misconduct by not issuing tickets to certain passengers though he had collected fare from them and tickets issued to the passengers were also not punched. Therefore, a departmental inquiry was held against him and in the departmental inquiry it was found that he had committed misconduct; but as dispute was pending before the Industrial Tribunal, instead of passing the final order, an order of suspension was passed against him on 28.2.83 and a permission was sought from the conciliation officer u/s 33(1) of the Industrial Disputes Act. But it seems that the dispute raised by the respondent no.2 was withdrawn and therefore, on 20.2.84 the petitioner passed an order of dismissal against respondent no.1 dismissing him from service from 20.12.83 and on the same day one month's pay was paid to him as well as an application u/s 33(2)(b) was made before the conciliation officer for getting the approval for the said action.

3. Respondent no.1 had opposed the said approval application before the conciliation officer on the ground that there was no fulfillment of all the three conditions as required by sub section 33(2)(b) of the I.D.Act. It was contended that dismissal had taken place on 28.12.83, the payment was made on 20.2.84 and the approval was also sought on 20.2.84. Thus there is no happening of these 3 conditions viz. his dismissal, payment of one month's pay and seeking of approval on one and the same day and therefore, the conciliation officer has no jurisdiction to grant sanction u/s 33(2) (b) of the I.D.Act.

4. After hearing both the sides, the conciliation officer has favoured with the contention raised on behalf of the respondent no.1 and the conciliation officer came to the conclusion that though order of dismissal was passed on 20.2.84, the order of dismissal was to take effect from 28.12.83 and consequently payment of one month's pay and seeking of approval had not taken place on one and the same day and therefore, on that ground alone he refused to give approval to the said claim of the petitioner.

5. There is no dispute of the fact that the order of dismissal has been passed on 28.2.84, payment of one month's pay was made on that day and the approval was also sought immediately from the conciliation officer. The only contention which was raised before the

conciliation officer as well as before this court is that by the order of dismissal dated 28.2.84, the order of dismissal has taken effect from 28.12.83 and therefore, the conciliation officer was not competent to grant sanction u/s 33(2)(b) of the I.D. Act. But though the order of 20.2.84 mentions that the dismissal is taking effect from 28.12.83. in effect the dismissal will have to be taken into consideration as having taken place only on the date of the order i.e. 20.2.84. The mention in the order dated 20.2.84 that the dismissal is effective from 28.12.83 is illegal and improper and that part of the order will have to be ignored and negatived as has been held by the Supreme Court in the case of R. Jeevaratnam vs. State of Madras AIR 1966 SC 951 wherein the following observations have been made:

"An order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with super added direction that the order should operate retrospectively as from an anterior date . The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order stating that the appellant is dismissed, should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid part of the order."

Said decision is further followed by the Apex Court in the case of G.M.D.C. vs. P.H. Brahmabhatt A.I.R. 1974 S.C. 136

" It is obvious from the order terminating the services of the respondent that it is an order of discharge. But that order though dated January 6, 1971 purports to terminate the services of the respondent as from November 9, 1970 on the ground that his services were no longer required . In the covering letter of the same date, a month's salary was sent in lieu of one month's notice as provided in the Service Rules of the Corporation. The respondent contends that his order is defective because it purports to terminate his services retrospectively from November 9, 1970. Though the order is one purporting to terminate his services from a date anterior to the date of the order of termination, that order ex facie severable. In fact it is an order discharging the service of the respondent as from the date of

the order with the superadded direction that the order should operate retrospectively as from an anterior date. Even if the superadded part is invalid, there is no reason why the first part of the order does not take effect, as has been held by Supreme Court in Jeevaratnam vs. State of Madras (1967) 1 Lab LJ 391 = (AIR 1966 SC 951). The intention of the Corporation was no doubt to terminate the services of the respondent from the date from which his services were not available to the Corporation as he was absent without leave. For that reason the Corporation stated in the covering letter that the rest of his dues will be sent to him hereafter, which probably were intended to cover the period for which the leave was not granted or this may be in respect of the provident fund etc. In any case, as we have said earlier, the order of termination cannot be held to be defective merely because the order was to take effect from November 9, 1970. We will therefore, treat the order as an order of termination as from the date of the order with one month's salary in lieu of one month's notice which would more than meet the requirements, because there is a dispute as to whether even under the Service Rules the respondent was entitled to seven days' pay only in lieu of notice. In our view, the order cannot be held to be invalid."

6. Therefore, in view of the above cited decision of the Apex Court, the interpretation of the order dt. 20.2.84 by the conciliation officer that the dismissal has taken place on 28.12.83 is not correct and proper. He will have to hold that the dismissal has taken place on 20.2.84 by the order dated 20.2.84 and then to consider the claim of the petitioner for the approval of its action.

7. The conciliation officer had not at all considered the other aspect for granting or refusing to grant the approval to the petitioner's action and he had merely rejected the claim on the ground that the dismissal has taken place on 28.12.83 and the payment of one month's pay and seeking of approval had taken place on 20.2.84 and thus all those three things had not taken place simultaneously at one and the same time. Therefore, it is necessary to remit the matter to the conciliation officer to consider the approval application on merits and to decide the same by taking into consideration the observations made earlier in this

order.

8. Before disposing of this application finally I would like to deal with one of the submissions made by the learned advocate for the respondents before me. It is submitted before me that as per the Rules, the petitioner has attained the age of superannuation on 31.7.89 but the petitioner has not been paid the amount lying with the petitioner in the P.F. account of the petitioner as well as gratuity. The learned advocate for the petitioner has fairly conceded before me that they will make payment of all the dues towards gratuity as well as P.F. as per their own account. The question as to whether the petitioner is to get the P.F from February 1984 or not could be decided after final decision of the application but the petitioner should pay all the dues towards the P.F and gratuity of the petitioner till 20.2.84. Said amount should be paid to the petitioner within six weeks from today.

9. In the circumstances the order passed by the respondent no.2 on 6.9.96 is quashed and set aside. The matter is remitted to the conciliation officer to decide the same according to law and he should decide the same within 3 months from the date of receipt of the writ of this court. Rule made absolute to the aforesaid extent. No order as to costs.

(S.D.Pandit.J)